12 August 1959

MEMORANDUM FOR THE RECORD

SUBJECT: Conversation with Mr. Focke, Bureau of the Budget

1. Mr. Focke, Bureau of the Budget, telephoned in connection with our reply on the proposed Department of Defense executive order concerning the Industrial Security Program. He noted that our view was that so long as it was a DOD order we were not concerned although a general order might cause problems. He indicated that there was a possibility a general order would be forthcoming and asked for our views on an informal basis of the difficulties this might cause us. STATINTL [redacted] was notified and he will have [redacted] contact STATINT me to develop an appropriate response.

2. Mr. Focke also raised the question of the executive order proposed by the Atomic Energy Commission and Department of Defense in which we had requested an amendment to include authority to transmit Restricted Data. Mr. Focke was concerned with the Director's letter which said any deletion or change involving the Agency should be brought to our attention. He indicated that the part dealing with CIA was being deleted, and the matter had been forwarded to Justice for final approval. I assured him that this did not cause us any concern since we had been working with AEC and DOD looking toward submission of a separate executive order and concurring in the deletion of the Agency from the previous order.

ST [redacted]

JOHN S. WARNER
Legislative Counsel

OGC Has Reviewed

DOD review(s) completed.

cc: OGC Subject - Security
Leg. Counsel Subject - RD
Chrono.

STAT OGC/LC:JSW [redacted]

SECRET

RE: Applicability of Proposed Executive Order to CIA

1. Proposed E.O. as now prepared pertains only to Defense. To extend it to apply to all agencies would add whom besides CIA? Who else has classified contracts except AEC who act under their own statute? Cannot think of any others.

2. The E.O. would make it impossible to continue our program of procurement of clandestine devices in that, if an appeal is instituted, CIA would have to furnish a detailed statement of reasons of ineligibility. This would have to be unclassified and would publicly identify CIA as the one contracting for the article being produced under the contract. This would render the item valueless for future use and could very possibly endanger the lives of those using them currently in foreign areas.

3. CIA standards for clearances to classified information would become public knowledge as a result of the hearings during the appeals. These standards are higher than those of other agencies and the question would probably be raised as to why a clearance from another governmental organization would not satisfy CIA.

4. In the event derogating information had been received from SI sources regarding an individual, it would be impossible to in any way describe the nature of such information in the "detailed statement" or elsewhere. Similar blocks would result when information was

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Approved For Release 2007/02/07 : CIA-RDP62-00631R000400020004-3

RE: Applicability of Proposed Executive Order to CIA

received from normal foreign intelligence sources.

5. Unlike components of the Department of Defence, CIA has no units dispersed throughout the country. Hence, it would be most expensive and difficult to conduct appeal hearings in the vicinity of the residence of the person appealing.

14 JUL 1959

Mr. Arthur B. Focke
General Counsel
Bureau of the Budget
Washington 25, D. C.

Dear Mr. Focke:

Your letter of July 8, 1959, requested an expression of our views with respect to the Executive Order proposed by the Department of Defense entitled "Industrial Security Program."

The problems of this Agency in regard to industrial security are different from those of the Department of Defense, both in nature and scope. Therefore, an Executive Order of the type proposed by the Department of Defense would not be suitable for our purposes. Inasmuch as it applies only to the Department of Defense and the National Aeronautics and Space Administration, there is no objection to the proposed Executive Order on the part of this Agency, and we do not feel competent to comment on the technical problems involved.

If there is any question of applying such an Order to this Agency or making the Order of general application, we should be informed so that we can assure the continuance of our present procedures.

Sincerely,

s/ Lawrence R. Houston

Lawrence R. Houston
General Counsel

STATINTL cc: Office of Securit[redacted]
STATINTL Office of Logistics via [redacted]
OGC chrono-no circ
subject-Security

STAT OGC:LRH:[redacted]

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
Washington 25, D. C.

July 8, 1959

My dear Mr. Director:

The Department of Defense, by letter of July 7, 1959, has submitted to the Director of the Bureau of the Budget, in accordance with Executive Order No. 10006 of October 9, 1948, a proposed Executive order entitled "Industrial Security Program." Copies of the letter and the proposed Executive order transmitted therewith are enclosed.

The Director of the Bureau of the Budget would appreciate receiving an expression of your views with respect to this matter.

Because of the urgency of this matter, a reply is requested at the earliest practicable date.

Sincerely yours,

Arthur B. Focke

General Counsel

Honorable Allen W. Dulles
Director
Central Intelligence Agency
Washington 25, D. C.

Enclosures

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

Washington 25, D. C.

July 7, 1959

Dear Mr. Stans:

On June 29, 1959 the Supreme Court handed down a decision in Greene v. McElroy to the effect that the present Industrial Security Program operated by the Department of Defense lacks "explicit authorization from either the President or Congress" as it relates to the denial or revocation of clearance of individuals in private industry. The majority opinion ruled that neither Congress nor Presidential authorization could be inferred for a procedure which did not afford the safeguards of confrontation and cross-examination.

In the light of this decision, continued operation of this aspect of the Industrial Security Program of the Department of Defense is impossible without an authorizing executive order or law. Without such an order it is necessary either to suspend further operations of this aspect of the Industrial Security Program or require full disclosure of our investigative sources regardless of the impact on the national security. It is believed essential that an executive order be issued immediately.

In view of the above, the Department of Defense recommends for your consideration the promulgation of the enclosed executive order. The executive order would apply to employees in private industry who are required to have access to classified information in connection with contracts with the Department of Defense or the National Aeronautics and Space Administration. The order would further prescribe certain minimum procedures for determining their eligibility for clearance, but at the same time would preserve the right to withhold information or witnesses where in the opinion of the Secretary of Defense the production of such information or witnesses would be prejudicial to the national security.

It is assumed that this executive order would be disseminated to other agencies of the Government directly concerned with industrial security matters. It is requested that the Department of Defense be afforded a further opportunity to comment on the final draft before promulgation.

Sincerely yours,

ROBERT DECHERT

Honorable Maurice H. Stans

Director, Bureau of the Budget

7/7/59

EXECUTIVE ORDER NO. _____

INDUSTRIAL SECURITY PROGRAM

WHEREAS the interests of national defense require the preservation of the ability of the United States to protect and defend itself against all hostile or destructive actions by covert or overt means, including espionage and subversion, as well as military action; and

WHEREAS it is essential that certain information affecting the national defense be protected against unauthorized disclosure; and

WHEREAS, while fully recognizing the necessity of preserving and maintaining the traditional rights and privileges of the individual, it is, nevertheless, necessary and warranted in determining what constitutes fair, impartial, and equitable procedure for determining eligibility for clearance for access to classified information that paramount consideration be given to the interests of national security:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and the statutes of the United States, and as President of the United States, and deeming such action necessary and warranted in the best interests of the Nation, it is hereby ordered as follows:

Section 1. The Secretary of Defense in connection with the bidding, negotiation, award, performance or termination of contracts with the Department of Defense or the National Aeronautics and Space Administration involving classified information or in connection with other releases to United States industry of classified information for which the Department of Defense has safeguarding responsibility, shall, consistent with this Order, for maintaining and continuing the Industrial Security

Program prescribe such regulations, requirements, restrictions, and safeguards as he deems necessary to safeguard classified information.

SEC. 2. Access to classified information shall be permitted only after appropriate security determinations have been made under regulations prescribed by the Secretary of Defense. Decisions shall be based upon determinations that the granting of such access would be clearly consistent with the interests of national security.

SEC. 3. Under regulations prescribed by the Secretary of Defense an individual whose eligibility for security clearance has been questioned shall be furnished (a) a detailed statement of the reasons why his eligibility for clearance has been questioned which shall be stated as specifically as the Secretary of Defense or his designee determines that the interests of national security permit; (b) an opportunity, after he has filed a reply to such statement, to appear personally for the purpose of determining his eligibility for such clearance and to present evidence on his behalf; (c) a reasonable time to prepare for such appearance; and (d) an opportunity to be represented, at his own expense, by counsel.

SEC. 4. The Department of Defense shall make available at such appearances, to the extent permitted by law and except as hereinafter provided, all witnesses relied upon by the Government to support controverted issues, who shall testify under oath or affirmation and shall be subject to cross-examination by or on behalf of the individual concerned. No information or testimony shall be used, over the objec-

tion of the individual whose eligibility is in issue, to deny or revoke any such clearance unless such information or testimony is so produced and opportunity for cross-examination is so provided, except as set forth in section 5.

SEC. 5. Information not so produced or testimony of witnesses not available for cross-examination may be used only under one of the following:

(1) As to information or witnesses who are employees or regular informants of an official investigative agency, such information or testimony may be used if the Secretary of Defense or his designee determines, after advice from the head of the investigative agency involved, that to produce such information or witness would under the circumstances be prejudicial to the national security; or

(2) As to other information or witnesses, when the head of the investigative agency involved advises that the information or witness in question cannot be produced for reasons specified in such advice and that in his judgment the information is believed to be reliable, the Secretary of Defense, the Deputy Secretary of Defense or, if so designated by the Secretary of Defense, the Director of the Department of Defense Industrial Personnel Security Review Program may determine that the information in question may be used if he finds that (1) it is in his judgment both reliable and pertinent and (2) to make a decision without the benefit of such information would, in view of the category of clearance sought and all circumstances involved, be prejudicial to the national security.

Next 1 Page(s) In Document Exempt

SECRET

Registered-Return Receipt Requested

Attention:

Subject : Contract Security Authorizations

Gentlemen:

You are advised that the following personnel of your organization are authorized to have access to classified information and/or material relative to our classified contracts and proposal requests, through the security classification indicated below:

This information should not be disseminated to the employee or furnished anyone outside your immediate office, except that where operationally required key administrative and supervisory personnel may be informed on a "need-to-know" basis, provided that such administrative and supervisory personnel have been authorized by this office to have access to classified information.

It is requested that this office be advised immediately in the event of termination of employment of the above listed employees, or the transfer, for cause, of these employees from work on our classified contracts, with a statement of the reason for such termination or transfer.

Very truly yours,

NOTICE

This material contains information affecting the National Defense of the United States within the meaning of the espionage laws, Title 18, USC, Secs. 793 and 794, the transmission or revelation of which in any manner to an unauthorized person is prohibited by law.

31 MAR 1959

Honorable Emanuel Celler
Chairman
Committee on the Judiciary
House of Representatives
Washington 25, D. C.

Dear Mr. Celler:

I have followed with much interest S. 355, a bill to amend the United States Code to prohibit the misuse of names, emblems and insignia by various private organizations to indicate Federal agency. This bill was passed by the Senate with amendments and referred to your Committee for action.

This Agency is not protected from the misuse of its name or initials by private organizations as are the FBI and certain other departments. On at least one occasion a private organization has used the initials "C.I.A." in such a manner that a false impression of Federal relationship could be gained. We have considered requesting specific prohibitions in the United States Code similar to those of the FBI and others. However, it appears that with minor adjustments S. 355 would serve our purposes.

As amended by the Senate Judiciary Committee, S. 355 sufficiently identifies the types of organizations most likely to misuse this Agency's name or initials. However, it does not specifically prohibit the use of initials in such a manner as would convey a false impression of Federal agency. I suggest for your consideration a further amendment of S. 355 so that lines 4 and 5 of page 2 of the bill as passed by the Senate would read as follows:

" . . . 'national', 'Federal', or 'United States', the initials 'U.S.', or any other initials, or any emblem, insignia, or name, for the purpose of conveying . . . . "

If you should desire further information on this matter, please do not hesitate to call upon me.

The Bureau of the Budget has advised that it has no objection to the submission of this report.

Sincerely,

s/ John S. Warner

John S. Warner
Legislative Counsel

4 cc: Bureau of the Budget

Distribution:
O & 1 - Addressee
4 - Bureau of the Budget
1 - General Counsel
1 - Comptroller
1 - Office of Security
OGC/LC/GLC/[redacted] 27 Mar 59)
1 - LegCounsel (Subj.)
1 - LegCounsel (Chrono)

Note: Signed by JSW on Friday, 27 March 1959
Cleared by BOB on Monday, 30 March 1959
Sent out and date stamped on 31 March 1959

TRANSMITTAL SLIP	DATE 3/2/69
TO: OGC	
ROOM NO. 220	BUILDING East
REMARKS:	
FROM: Leg Counsel	
ROOM NO.	BUILDING / EXTENSION

FORM NO. 241 REPLACES FORM 36-8 (47)
1 FEB 55 WHICH MAY BE USED.